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## **FACSIMILE COVER SHEET**

**DATE:** February 5, 2007  
**FILE NO:** ROC920010109US1 (IBMK10109)  
**TO:** MAIL STOP APPEAL BRIEF - PATENTS  
Examiner Ronald Laneau  
**FAX NO:** 1-571-273-8300  
**FROM:** Gero G. McClellan / David M. Magness  
**PAGE(S) with cover:** 27

**RE:**

**TITLE:** Method and Apparatus Upgrade Assistance Using Critical Historical Product Information

**U.S. SERIAL NO.:** 09/865,371  
**FILING DATE:** May 25, 2001  
**INVENTOR(S):** Earl Walter Emerick et al.  
**EXAMINER:** Ronald Laneau  
**GROUP ART UNIT:** 3627  
**CONFIRMATION NO.:** 3728

Attached are the following document(s) for the above-referenced application:

Appeal Brief

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
 BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

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In re Application of:  
 Earl Walter Emerick et al.

Serial No.: 09/865,371

Confirmation No.: 3728

Filed: May 25, 2001

For: Method and Apparatus Upgrade  
 Assistance Using Critical  
 Historical Product Information

Group Art Unit: 3627

Examiner: Ronald Laneau

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February 5, 2007  
 Date

*D. M. Magness*  
 David M. Magness

**APPEAL BRIEF**

Applicants submit this Appeal Brief to the Board of Patent Appeals and Interferences on appeal from the decision of the Examiner of Group Art Unit 3627 dated September 5, 2006, finally rejecting claims 1-46. The final rejection of claims 1-46 is appealed. This Appeal Brief is believed to be timely since it is facsimile transmitted by the due date of February 5, 2007, as set by the filing of a Notice of Appeal on December 5, 2006. Please charge the fee of \$500.00 for filing this brief to Deposit Account No. 09-0465/ROC920010109US1.

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### **Real Party in Interest**

The present application has been assigned to International Business Machines Corporation, Armonk, New York.

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### **Related Appeals and Interferences**

Applicant asserts that no other appeals or interferences are known to the Applicant, the Applicant's legal representative, or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

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### **Status of Claims**

Claims 1-46 are pending in the application. Claims 1-46 were originally presented in the application. Claims 1-46 stand finally rejected as discussed below. The final rejections of claims 1-46 are appealed. The pending claims are shown in the attached Claims Appendix.

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### **Status of Amendments**

All claim amendments have been entered by the Examiner. No amendments to the claims were proposed after the final rejection.

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### Summary of Claimed Subject Matter

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#### A. CLAIM 1 - INDEPENDENT

One embodiment of the invention (see, e.g., Claim 1) provides a method of operating a computerized system to provide computer recommendation information. See, e.g., Pg. 18, Paragraph 0082; Pg. 24, Paragraph 0098; Figure 8, Item 800; Figure 18, Item 1800. The method includes generating an operation profile for a computer using machine performance information specific to the computer and obtained from the computer, wherein the operation profile indicates at least a usage trend for the computer. See, e.g., Pg. 16-17, Paragraphs 0077-0078; Pg. 24, Paragraph 0097; Figure 6, Item 600; Figure 17, Item 1700. The method also includes determining projected computer system requirements based on the usage trend for the computer and obtained from the computer and generating a recommendation of system resources, which satisfies at least the projected requirements. See, e.g., Pg. 11, Paragraph 0058; Pg. 16, Paragraph 0078; Figure 1, Item 116; Figure 6, Item 600.

#### B. CLAIM 16 - INDEPENDENT

One embodiment of the invention (see, e.g., Claim 16) provides a method of operating a computerized system to provide computer recommendation information for a plurality of computers. See, e.g., Pg. 18, Paragraph 0082; Pg. 24, Paragraph 0098; Figure 8, Item 800; Figure 18, Item 1800. The method includes receiving machine performance information for the plurality of computers and obtained from the plurality of computers and storing the machine performance information to a history database. See, e.g., Pg. 8, Paragraphs 0050-0051; Figure 1, Item 106, 110, 112, 103, 118; Pg. 10, Paragraph 0057; Figure 1, Item 118. The method also includes generating an operation profile for each computer using machine performance information specific to the respective computer and obtained from the respective computer. See, e.g., Pg. 16-17, Paragraphs 0077-0078; Pg. 24, Paragraph 0097; Figure 6, Item 600; Figure 17, Item 1700. The operation profile indicates at least a history profile and a usage trend for the respective computer. See, e.g., Pg. 16-17, Paragraphs 0077-0078; Pg. 24,



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Paragraph 0097; Figure 6, Item 600; Figure 17, Item 1700. The method further includes receiving system requirements specifications reflecting workload requirements for the respective computer and obtained from the respective computer not accounted for in the machine performance information. See, e.g., Pg. 12, Paragraph 0063; Pg. 18, Paragraphs 0082-0083; Figure 3, Item 310; Figure 8, Item 800. Projected computer system requirements are determined based on the history profile, the usage trend of the plurality of computers and the received system requirements specifications for the computer. See, e.g., Pg. 11, Paragraph 0058; Pg. 14, Paragraph 0098; Figure 18, Items 1800. A recommendation of system resources is generated, comprising at least one computer system solution, which satisfies the projected requirements. See, e.g., Pg. 11, Paragraph 0058; Pg. 14, Paragraph 0098; Figure 18, Items 1800.

#### D. CLAIM 27 - INDEPENDENT

One embodiment of the invention (see, e.g., Claim 27) provides a system for generating recommendation information for computer devices. See, e.g., Pg. 8, Paragraph 0050; Pg. 12, Paragraph 0062; Figure 1, Items 100, 116. The system includes a machine information collection system configured to receive machine performance information for a plurality of computers and obtained from a plurality of computers and a history database containing statistical information generated using the machine performance information. See, e.g., Pg. 8, Paragraph 0051; Pg. 15, Paragraph 0017; Figure 1, Items 106, 112, 103, 114, 118; Figure 4, Item 402. The system also includes a system sizer configured to determine projected computer system requirements based on the statistical information and to produce system recommendations of system resources. See, e.g., Pg. 11, Paragraph 0058; Pg. 12, Paragraph 0062; Pg. 24, 0098; Figure 1, Item 116; Figure 18, Item 1800. The system recommendations of system resources include at least one computer system solution, which satisfy the projected requirements. See, e.g., Pg. 24, 0098; Figure 1, Item 116; Figure 18, Item 1800.

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## E. CLAIM 38 - INDEPENDENT

One embodiment of the invention (see, e.g., Claim 38) provides a system for generating recommendation information for computer devices. See, e.g., Pg. 8, Paragraph 0050; Pg. 12, Paragraph 0062; Figure 1, Items 100, 116. The system includes a network connection to a network of computers a system sizer. See, e.g., Pg. 8, Paragraph 0051; Figure 1, Items 106, 103, 114, 116. The system sizer is configured to determine projected computer system requirements based on statistical information of machine performance information of the computers and obtained from the computers and at least one of user input information and third-party solutions. See, e.g., Pg. 9, Paragraph 0052; Pg. 11, Paragraph 0058; Pg. 12, Paragraph 0062; Pg. 24, 0098; Figure 1, Item 116; Figure 18, Item 1800. The system sizer is also configured to produce system recommendations of system resources, comprising at least one computer system solution, which satisfy the projected requirements. See, e.g., Pg. 11, Paragraph 0058; Pg. 12, Paragraph 0062; Pg. 24, 0098; Figure 1, Item 116; Figure 18, Item 1800.

## F. CLAIM 46 - INDEPENDENT

One embodiment of the invention (see, e.g., Claim 46) provides a method for providing computer purchasing recommendations for a plurality of computers. See, e.g., Pg. 18, Paragraph 0082; Pg. 24, Paragraph 0098; Figure 8, Item 800; Figure 18, Item 1800. The method includes receiving, from the Internet, a plurality of summaries of machine performance data for each of the plurality of computers and obtained from the plurality of computers and recording the plurality of summaries of machine performance in a machine performance history. See, e.g., Pg. 8, Paragraphs 0050-0051; Figure 1, Item 106, 110, 112, 103, 118. The method also includes determining projected resource requirements based on the machine performance history and, based on the projected resource requirements, providing computer purchasing recommendations of system resources, comprising computer systems that satisfy the projected resource requirements. See, e.g., Pg. 11, Paragraph 0058; Pg. 12, Paragraph 0062; Pg. 24, 0098; Figure 1, Item 116; Figure 18, Item 1800. The method further includes receiving

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purchase orders for the computer systems by requests sent across the Internet. See, e.g., Pg. 12, Paragraph 0065; Pg. 13, Paragraph 0069; Figure 1, Item 103, 123.

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### **Grounds of Rejection to be Reviewed on Appeal**

1. Claims 1-46 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Bhat* US Pat. No. 5,668,995 (hereinafter *Bhat*) in view of *Cline et al.*, US 2002/0087897 (hereinafter *Cline*).

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## ARGUMENTS

### **Obviousness of Claims 1-46 over *Bhat et al.* in view of *Cline et al.***

#### *The Applicable Law*

The Examiner bears the initial burden of establishing a *prima facie* case of obviousness. See MPEP § 2142. To establish a *prima facie* case of obviousness three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one ordinary skill in the art, to modify the reference or to combine the reference teachings. Second, there must be a reasonable expectation of success. Third, the prior art reference (or references when combined) must teach or suggest all the claim limitations. See MPEP § 2143. The present rejection fails to establish at least the first and third criteria, as described below.

#### 1. The Cited References

In the current rejection, the Examiner cites to *Cline* and *Bhat*. *Cline* is directed towards dynamically changing the performance of devices in a computer platform. *Cline*, Title. *Cline* describes monitoring and controlling individual device performance states of multiple devices in computer system. *Cline*, Pg. 1, Para. 0011. *Bhat* is directed to capacity planning system which provides a correctly sized and configured computer system in response to user specified requirements. See *Bhat*, Abstract. Thus, *Bhat* describes a method of automating the marketing and sales process to save time for salespersons. See *Bhat*, Col. 2, Lines 57-59.

#### 2. There is no Suggestion or Motivation to Combine the Cited References

In the rejection, The Examiner suggests combining an alleged usage trend in *Cline* with *Bhat* to determine projected requirements for a computer system solution. *Final Office Action dated September 5, 2006* (hereinafter *Final Office Action*), Pg. 3.

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Accordingly, the Examiner has suggested a combination which combines monitoring aspects of *Cline* which are used to change performance states of devices in a computer system with aspects of *Bhat* which describe a capacity planning system for marketing and selling a computer system in response to user specified requirements.

The Examiner states that it would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a system solution based on a usage trend taught by *Cline* with the system of *Bhat* because it would provide comprehensive control over operational states of a computer system. *Id.*

Applicants respectfully submit that the Examiner has not provided a suggestion or motivation to combine the cited references in the manner suggested. The combination suggested by the Examiner is one of monitoring aspects of *Cline* with marketing and sales aspects of *Bhat*. However, the motivation provided by the Examiner merely describes how aspects of *Cline* (performance monitoring) are used within *Cline itself*, to change performance states of devices in a computer system. See *Cline*, Abstract. Therefore, the combination suggested by the Examiner is not achieved by a person of ordinary skill in the art acting on the motivation suggested by the Examiner. Stated differently, the motivation suggested by the Examiner is not directed to achieving the suggested combination, and, therefore, is not motivation at all. Accordingly, the Examiner has not provided a suggestion or motivation to combine monitoring aspects of *Cline* with marketing and sales aspects of *Bhat*.

Therefore, Applicants respectfully submit that the first requirement of the *prima facie* case of obviousness has not been satisfied and withdrawal of the rejection is respectfully requested.

### 3. The Cited References Do not Teach or Suggest All the Claim Limitations

The pending claims describe generating an operation profile for a computer using machine performance information specific to the computer and obtained from the computer, wherein the operation profile indicates at least a usage trend for the computer. The Examiner states that *Bhat* describes "generating an operation profile for

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a computer using machine information specific to the computer and obtained from the computer” in the Abstract of *Bhat*. *Final Office Action*, Pg. 2.

The Abstract of *Bhat* states that a capacity planning system provides a correctly sized and configured computer system in response to user specified requirements. See *Bhat*, Abstract; Col. 1, Lines 57-61. Thus, in *Bhat*, the capacity planning system assists a user through the process of sizing and configuring a computer system. *Bhat*, Col. 2, Lines 31-35. Accordingly, *Bhat* describes user input for a given client-server environment and, as depicted in Figure 2A, Item 26, the user is prompted for specifications. *Bhat*, Col. 3, Lines 6-14. Therefore, in *Bhat*, the user provides specified requirements for the computer system. *Bhat* does not describe configuring a computer system using information obtained from that same computer system.

Accordingly, *Bhat* does not describe generating an operation profile for a computer using machine performance information specific to the computer and obtained from the computer, wherein the operation profile indicates at least a usage trend for the computer. Therefore, the cited reference does not teach or suggest the subject matter asserted by the Examiner, and withdrawal of the rejection is respectfully requested.

#### 4. The Cited References are Non-Analogous Art

To rely on a reference under 35 U.S.C. § 103, the reference must be analogous prior art. See MPEP § 2141.01(a). A reference is considered analogous prior art if the reference is either in the field of Applicants' endeavor or, if the reference is reasonably pertinent to the particular problem with which the inventor was concerned. *Id.* A reference is pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering his problem. See *id.*, citing *Wang Laboratories v. Toshiba Corp.*, 993 F.2d 858 (Fed. Cir. 1993). Furthermore, when determining whether a reference is analogous, the Examiner cannot look at isolated teachings of the prior art without considering the over-all context within which those teachings are presented. *In re Pagliaro*, 657 F.2d 1219, 1225 (Cust & Pat.App., 1981). Thus, the Examiner must consider each reference as a whole and

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determine if the reference as a whole is concerned with problems associated with the pending application. *Id.*

As described above, *Bhat* is directed to assessing a customer's ongoing needs and matching those needs with an appropriate cost effect product configuration. *Bhat*, Col. 1, Lines 29-32. Thus, *Bhat* provides an automated marketing and sales process which provides a system configuration based on a specified set of user constraints. *Bhat*, Col. 2, Lines 57-59. Accordingly, *Bhat*, when viewed as a whole, is directed to marketing and selling of a computer system based on customer requirements specified by the customer.

In contrast, *Cline* is directed to conserving energy in a computer system using low-power states to reduce power consumption. *Cline*, Pg. 1, Para 0004, Para. 0006. Thus, *Cline* dynamically monitors performance states of devices in a computer system and controls performance states of the devices. *Cline*, Pg. 1, Para. 0011. *Cline* is solely directed towards dynamic operation and power consumption in a computer system. See generally, *Cline*. *Cline* does not mention customers, marketing, selling, purchasing, or upgrading of computer system. See *id.* Therefore, when viewed as a whole, *Cline* is not concerned with the problems of marketing and selling a computer system or providing product upgrades. See *id.* Accordingly, Applicants respectfully submit that *Cline* is not analogous prior art and cannot be relied on as a reference under 35 U.S.C. § 103. See MPEP § 2141.01(a). Therefore, withdrawal of the rejection and allowance of the claims is respectfully requested.



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**CONCLUSION**

The Examiner errs in finding that claims 1-46 are unpatentable over *Bhat*, US Pat. No. 5,668,995 in view of *Cline et al.*, US 2002/0087897 under 35 U.S.C. § 103(a). Withdrawal of the rejection and allowance of all claims is respectfully requested.

Respectfully submitted, and  
**S-signed pursuant to 37 CFR 1.4,**

/Gero G. McClellan, Reg. No. 44,227/

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**CLAIMS APPENDIX**

1. (Previously Presented) A method of operating a computerized system to provide computer recommendation information, comprising:
  - generating an operation profile for a computer using machine performance information specific to the computer and obtained from the computer, wherein the operation profile indicates at least a usage trend for the computer;
  - determining projected computer system requirements based on the usage trend for the computer and obtained from the computer; and
  - generating a recommendation of system resources, which satisfies at least the projected requirements.
2. (Previously Presented) The method of claim 1, further comprising, prior to generating the operation profile, receiving, at first timed intervals, the machine performance information from the computer via a network connection, wherein the machine performance information is collected at second timed intervals, shorter than the first timed intervals, by the computer.
3. (Previously Presented) The method of claim 1, wherein generating the recommendation comprises processing system requirements specifications reflecting a desired future use of the computer.
4. (Original) The method of claim 1, wherein generating the recommendation comprises returning web based content to a web client.
5. (Original) The method of claim 1, further comprising receiving a purchase order for the at least one computer system solution.
6. (Original) The method of claim 1, further comprising allowing a user to iteratively modify the recommendation.

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7. (Previously Presented) The method of claim 1, wherein generating the recommendation comprises processing system requirements specifications selected by a user from a plurality of system options available at a network address.
8. (Original) The method of claim 7, wherein the plurality of system options are provided by a plurality of third party solution providers.
9. (Original) The method of claim 1, further comprising configuring the at least one computer system solution to indicate system specifications and a price.
10. (Previously Presented) The method of claim 9, further comprising:  
providing product options and associated prices to a user for selection;  
receiving a product option selection from the user for at least one of the product options; and  
outputting a starting configuration for the at least one computer system solution.
11. (Original) The method of claim 10, further comprising:  
receiving a configuration selection from the user to modify the starting configuration;  
determining whether the configuration selection is valid; and  
if so, producing a configured system viewable by the user.
12. (Original) The method of claim 11, further comprising receiving a purchase order for the configured system.
13. (Original) The method of claim 1, further comprising allowing a user to modify the recommendation to produce a modified computer system solution.
14. (Original) The method of claim 13, further comprising:  
configuring the modified computer system solution to indicate system specifications and a price; and  
receiving a purchase order for the configured modified computer system solution.

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15. (Previously Presented) The method of claim 13, further comprising receiving a purchase order for the modified computer system solution.
16. (Previously Presented) A method of operating a computerized system to provide computer recommendation information for a plurality of computers, comprising:  
receiving machine performance information for the plurality of computers and obtained from the plurality of computers;  
storing the machine performance information to a history database;  
generating an operation profile for each computer using machine performance information specific to the respective computer and obtained from the respective computer, wherein the operation profile indicates at least a history profile and a usage trend for the respective computer;  
receiving system requirements specifications reflecting workload requirements for the respective computer and obtained from the respective computer not accounted for in the machine performance information;  
determining projected computer system requirements based on the history profile, the usage trend of the plurality of computers and the received system requirements specifications for the computer; and  
generating a recommendation of system resources, comprising at least one computer system solution, which satisfies the projected requirements.
17. (Original) The method of claim 16, wherein generating the recommendation comprises returning web based content to a web client.
18. (Previously Presented) The method of claim 16, wherein the history database is operated by one of a manufacturer of the computers and a seller of the computers.
19. (Original) The method of claim 16, further comprising allowing a user to iteratively modify the recommendation to produce a modified computer system solution.

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20. (Original) The method of claim 16, further comprising:  
providing product options and associated prices to a user for selection;  
receiving a product option selection from the user for at least one of the product options; and  
outputting a starting configuration for the at least one computer system solution.
21. (Original) The method of claim 20, further comprising:  
receiving a configuration selection from the user to modify the starting configuration;  
determining whether the configuration selection is valid; and  
if so, producing a configured system output viewable by the user.
22. (Original) The method of claim 16, further comprising configuring the at least one computer system solution to indicate system specifications and a price.
23. (Original) The method of claim 22, further comprising receiving a purchase order for the modified computer system solution.
24. (Original) The method of claim 16, further comprising allowing a user to modify the recommendation to produce a modified computer system solution.
25. (Original) The method of claim 24, further comprising determining a price for the modified computer system solution.
26. (Original) The method of claim 25, receiving a purchase order for the modified computer system solution.
27. (Previously Presented) A system for generating recommendation information for computer devices, comprising:

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a machine information collection system configured to receive machine performance information for a plurality of computers and obtained from a plurality of computers;

a history database containing statistical information generated using the machine performance information; and

a system sizer configured to determine projected computer system requirements based on the statistical information and to produce system recommendations of system resources, comprising at least one computer system solution, which satisfy the projected requirements.

28. (Previously Presented) The system of claim 27, wherein the system sizer is further configured to produce system recommendations using user input.

29. (Original) The system of claim 27, further comprising an order tool configured to process orders for the users for a suggested system satisfying the recommendations.

30. (Original) The system of claim 27, wherein the machine information collection system, the history database and the system sizer are operated by a supplier of computer devices and the plurality of computers are operated by customers of the supplier.

31. (Previously Presented) The system of claim 27, further comprising storage space containing third party solutions for display to the users and accessible to the system sizer, wherein the third party solutions are utilized to produce the system recommendations.

32. (Original) The system of claim 27, further comprising a network connection to the plurality of computers.

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33. (Original) The system of claim 27, further comprising a web server having a network connection to the plurality of computers and configured to provide the statistical information and the system recommendations to requestors.

34. (Original) The system of claim 27, wherein the statistical information indicates usage trends for system resources of the plurality of computers.

35. (Original) The system of claim 27, further comprising a tool configured to determine a price and a valid configuration for a system satisfying the system recommendations.

36. (Previously Presented) The system of claim 27, further comprising:  
a comparison tool configured to allow users to compare product line options capable of satisfying the system recommendations; and  
a configuration tool configured to receive feature selections from the users and determine a valid configuration for a system satisfying the system recommendations.

37. (Original) The system of claim 36, further comprising an order tool configured to process orders from the users for the system.

38. (Previously Presented) A system for generating recommendation information for computer devices, comprising:  
a network connection to a network of computers; and  
a system sizer configured to determine projected computer system requirements based on statistical information of machine performance information of the computers and obtained from the computers and at least one of user input information and third-party solutions and to produce system recommendations of system resources, comprising at least one computer system solution, which satisfy the projected requirements.

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39. (Original) The system of claim 38, wherein the statistical information indicates usage trends for system resources of the plurality of computers.
40. (Original) The system of claim 38, further comprising a tool configured to determine a price and a valid configuration for a system satisfying the system recommendations.
41. (Original) The system of claim 38, further comprising an order tool configured to process orders for a suggested system satisfying the system recommendations.
42. (Original) The system of claim 38, further comprising:  
a machine information collection system configured to receive machine information for a plurality of computers; and  
a history database containing statistical information generated using the machine information.
43. (Original) The system of claim 41, wherein the machine information collection system, the history database and the system sizer are operated by a supplier of computer devices and the plurality of computers are operated by customers of the supplier.
44. (Previously Presented) The system of claim 38, further comprising:  
a comparison tool configured to allow users to compare product line options capable of satisfying the system recommendations; and  
a configuration tool configured to receive feature selections from the users and determine a valid configuration for a system satisfying the system recommendations.
45. (Original) The system of claim 44, further comprising an order tool configured to process orders from the users for the system.



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46. (Previously Presented) A method for providing computer purchasing recommendations for a plurality of computers, comprising:

- receiving, from the Internet, a plurality of summaries of machine performance data for each of the plurality of computers and obtained from the plurality of computers;
- recording the plurality of summaries of machine performance in a machine performance history;
- determining projected resource requirements based on the machine performance history;
- based on the projected resource requirements, providing computer purchasing recommendations of system resources, comprising computer systems, that satisfy the projected resource requirements; and
- receiving purchase orders for the computer systems by requests sent across the Internet.

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## EVIDENCE APPENDIX

None.

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## RELATED PROCEEDINGS APPENDIX

None.